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E-filing

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 PERFECT 10, INC., a California
13 corporation,

14 Plaintiff,

15 v.

16 YANDEX N.V., a Netherlands
17 limited liability company; and DOES
18 1 through 100, inclusive,

19 Defendants.
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CV 12 1521
CASE NO.

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

DEMAND FOR JURY TRIAL

COMPLAINT

VIA FAX

1 Plaintiff Perfect 10, Inc. ("Perfect 10") avers:

2 **JURISDICTION AND VENUE**

3 1. Jurisdiction. This action arises under the Copyright Act, 17
4 U.S.C. § 101 *et seq.* This Court has jurisdiction over the subject matter of this
5 action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6 2. Venue. Venue is proper in this Court pursuant to 28 U.S.C. §
7 1391 (b)(1) and (3), (c), and § 1400(a).

8 3. Personal Jurisdiction. Personal jurisdiction is proper over the
9 Defendants because they have purposefully availed themselves of the privilege
10 of doing business in California and material elements of Defendants'
11 wrongdoing occurred in this State.

12 **THE PARTIES**

13 4. Plaintiff Perfect 10 is a California corporation with its principal
14 place of business in San Diego, California. Plaintiff published the popular
15 magazine PERFECT 10 and owns and operates the internet website located at
16 perfect10.com, which domain name Perfect 10 owns.

17 5. Defendant Yandex N.V. ("Yandex") is a Netherlands limited
18 liability company that owns and operates the internet websites located at
19 yandex.com, yandex.ru, yandex.st, and yandex.net. It operates a research
20 facility in Palo Alto, California, and is listed on the Nasdaq stock exchange
21 under the symbol YNDX. Its Securities and Exchange Commission filings
22 identify the address for its agent for service of process as 299 S. California Ave,
23 Suite 200, Palo Alto, CA 94306.

24 6. Does 1 through 100, inclusive, which are businesses owned or
25 controlled by Yandex which either directly or indirectly profit from and/or
26 directly or indirectly infringe or facilitate the infringement of Perfect 10
27 intellectual property, are sued herein under fictitious names because their true
28 names and capacities are unknown to Perfect 10. When Perfect 10 ascertains the

1 Doe Defendants' true names and capacities, it will seek leave to amend this
2 complaint to insert such true names and capacities. Perfect 10 is informed and
3 believes, and on that basis avers, that each Doe defendant acted with defendant
4 Yandex and is responsible for the harm and damages to Perfect 10 herein
5 averred. Defendant Yandex and the Doe Defendants are referred to hereinafter
6 collectively as "Yandex."

7 7. Perfect 10 is informed and believes, and on that basis avers, that
8 at all times material herein, each of the Defendants was the agent and/or
9 employee of the other Defendants, and, in doing the things herein averred, was
10 acting within the course and scope of such agency and employment.

11 **THE BUSINESS OF PERFECT 10**

12 8. The business of Perfect 10 consists of the design, creation,
13 production, marketing, promotion, and sale of copyrighted adult entertainment
14 products, including photographs, magazines, video productions, cell phone
15 downloads, and other media.

16 9. Perfect 10 was the publisher of the well-known magazine
17 PERFECT 10, but was forced to close that magazine because of rampant
18 infringement.

19 10. Perfect 10 creates or created, and sells or sold, calendars and
20 other merchandise featuring its images, and was involved in the licensing of
21 downloads of images for cellphones, but is not currently earning revenue from
22 that endeavor because of rampant infringement.

23 11. Perfect 10 owns and operates the internet website
24 perfect10.com. Consumers are provided access to content owned by Perfect 10
25 and made available by payment of a membership fee of \$25.50 per month.

26 12. Perfect 10's revenues are currently derived predominantly from
27 sales of memberships to its perfect10.com website. Sales of memberships to the
28 perfect10.com website are made by providing the customer with an individual

1 user name and password to access the website.

2 13. The Perfect 10 Copyrighted Works: Perfect 10 owns thousands
3 of valuable and unique copyrighted photographs, as well as video productions
4 and other proprietary materials. Perfect 10 owns the copyrights in and to these
5 works (the "Perfect 10 Copyrighted Works"). Perfect 10 has invested, and
6 continues to invest, substantial sums of money, time, effort, and creative talent,
7 to make and produce the Perfect 10 Copyrighted Works. In addition, in order to
8 produce and sell the Perfect 10 Copyrighted Works, Perfect 10 is required to
9 make numerous payments, including but not limited to model fees, photographer
10 fees, location costs, styling costs, make up costs, printing costs, film and
11 processing costs, travel costs, as well as distribution, public relations, legal, and
12 advertising and promotion costs. A list of Perfect 10 copyright registrations is
13 attached as Exhibit 1.

14 THE BUSINESS OF YANDEX

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16 14. Yandex operates the internet websites yandex.com, and
17 yandex.ru, both of which are accessible in the United States and throughout the
18 world. Each site operates as an Internet search engine and on information and
19 belief, share the same technology resources (servers, databases, programs, etc.)
20 The primary difference between the two is that yandex.com is in English and
21 yandex.ru is in Russian.

22 15. Yandex allows its users to search for images using search terms.
23 When a user enters an image search term, Yandex displays Yandex-created
24 pages of Yandex-created thumbnail images in response to that search. An
25 example of a Yandex-created page in response to a search on Isabelle Funaro, a
26 Perfect 10 model, is attached hereto as Exhibit 2. Upon information and belief,
27 Yandex must make a copy of the full-size image in order to create the Yandex
28 thumbnail version of that image that Yandex offers to its users.

1 16. When a user clicks on a particular thumbnail image, Yandex
2 displays the corresponding full-size image to the user and allows the user to
3 view or download the full-size image. Two examples of such a Yandex display
4 are attached as Exhibit 3. The first page of Exhibit 3 was obtained by clicking
5 on the image of Isabelle Funaro at the lower right of page 1 of Exhibit 2. The
6 second page of Exhibit 3 was obtained in a similar fashion by clicking on a
7 different Yandex thumbnail. In this way, Yandex completely usurps Perfect
8 10's business by offering the same full-sized works that Perfect 10 sells, for free
9 viewing and downloading to Yandex users.

10 17. Yandex also offers an "All sizes" link (see the red check mark in
11 the middle of each page of Exhibit 3). The "All sizes" link is similar to a
12 "search by image" function. When the user clicks on the "All sizes" link,
13 Yandex provides the user with, in some cases, hundreds of copies of the same
14 infringing Perfect 10 Image. With each such image, Yandex provides a link to
15 the infringing website which offers that image. In this way, Yandex uses Perfect
16 10 copyrighted materials to promote infringing websites that have
17 misappropriated Perfect 10 content and in some cases offer thousands of
18 additional infringing Perfect 10 copyrighted images. Exhibit 4 provides an
19 example of such results, in this case for a Perfect 10 image of the model/actress
20 Zita Gorog.

21 18. Yandex also offers a function whereby its users can perform
22 searches for full-size images residing on Yandex's servers. When the users
23 clicks on such thumbnails, Yandex displays the full-size image (hosted on
24 Yandex servers) to view or download. Yandex also places Yandex ads next to
25 such images. An example of Yandex's hosting a full-size Perfect 10 image of
26 Victoria's Secret supermodel Marisa Miller, and placing Yandex ads around
27 such an image, is attached as Exhibit 5. The Yandex ads appear at the bottom of
28 the page.

1 19. Yandex also provides a Web Search option, whereby a user can
2 search on a particular term, and receive, in response, a list of links to web pages.
3 In many cases, when the search is done on the name of a Perfect 10 model, many
4 of the links which Yandex provides are to web pages containing infringing
5 Perfect 10 copyrighted images of that model. Yandex also provides
6 unauthorized username/password combinations, which allow its users to enter
7 perfect10.com and download thousands of Perfect 10 copyrighted images
8 without paying for that right.

9 20. Yandex sells hundreds of millions of dollars each year in
10 advertising to websites that advertise so as to be seen by consumers who visit
11 Yandex. The greater the amount and quality of content that Yandex provides to
12 consumers, the more consumers Yandex attracts and the more advertising
13 revenue it generates. The availability of high-quality adult images, such as the
14 Perfect 10 Copyrighted Works, attracts millions of visitors to Yandex and thus
15 substantially and directly increases Yandex's advertising revenue.

16 21. Yandex has actual knowledge that specific Perfect 10
17 Copyrighted Works are available to its users using its search engine tools.
18 Specifically, Perfect 10 has provided to Yandex at least seventy-two written
19 Notices of Infringement ("NOIs") identifying specific examples of Perfect 10's
20 Copyrighted Works being made available for viewing and copying through
21 Yandex. Furthermore, Yandex is aware of specific infringements because
22 Perfect 10 Copyrighted Works in Yandex's search results usually contain visible
23 Perfect 10 Marks or visible copyright notices in the name of Perfect 10. Perfect
24 10 has repeatedly explained to Yandex that such images are always
25 unauthorized.

26 22. Yandex could take simple measures to prevent further access to
27 the infringing images (i.e. by removing the thumbnails and corresponding links
28 to the full-size images from its servers), and by ending its display of

1 unauthorized perfect10.com usernames and passwords, but has refused to do so.
2 On November 11, 2011, Yandex's attorney sent Perfect 10 a letter claiming that
3 it had no legal requirement to response to Perfect 10's NOIs. Yandex sent
4 similar letters to Perfect 10 again on January 18, 2012, January 25, 2012,
5 February 10, 2012, and February 14, 2012, claiming that it had no legal
6 obligation to response to Perfect 10's notices. Yandex is not eligible for Digital
7 Millennium Copyright Act ("DMCA") safe harbor because it has not provided
8 any information about its DMCA agent on its websites or registered with the
9 U.S. Copyright Office.

10
11 **FIRST CLAIM FOR RELIEF**
12 **(Copyright Infringement)**

13 23. Perfect 10 re-avers and incorporates herein by reference each
14 and every averment of paragraphs 1 through 22 above as though fully set forth
15 herein.

16 24. Perfect 10 is the owner of all right, title, and interest to each of
17 the Perfect 10 Copyrighted Works. Perfect 10 has registered its works with the
18 United States Copyright Office. Perfect 10 has been issued United States
19 copyright certificates listed on Exhibit 1, attached hereto.

20 25. Each of the Perfect 10 Copyrighted Works consists of material
21 original with Perfect 10 and each is copyrightable subject matter.

22 26. Yandex has copied, reproduced, distributed, adapted, and/or
23 publicly displayed the Perfect 10 Copyrighted Works without the consent or
24 authority of Perfect 10, thereby directly infringing Perfect 10's copyrights.

25 27. Yandex's conduct constitutes direct infringement of Perfect 10's
26 copyrights and exclusive rights under copyright in the Perfect 10 Copyrighted
27 Works in violation of Sections 106 and 501, et. seq. of the United States
28 Copyright Act, 17 U.S.C. §§ 106 and 501.

1 28. Yandex has induced, caused, and/or materially contributed to
2 unauthorized reproduction, adaptation, public display, and/or distribution of the
3 Perfect 10 Copyrighted Works by third party infringing websites, and by
4 Yandex's users and advertisers.

5 29. Yandex has and had knowledge that Perfect 10 Copyrighted
6 Works were made available using its search engines, could take simple measures
7 to prevent further damage to Perfect 10's Copyrighted Works, and failed to take
8 such measures.

9 30. Yandex's conduct constitutes contributory infringement of
10 Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10
11 Copyrighted Works.

12 31. Yandex has the right and ability to control full-size Perfect10
13 Copyrighted Works stored on its servers. Yandex places advertisements around
14 those images and derives a direct financial benefit from clicks on its ads that
15 appear next to such images. Yandex is thus profiting from direct infringement
16 while declining to exercise a right to stop or limit it.

17 32. Yandex's conduct constitutes vicarious infringement of Perfect
18 10's copyrights and exclusive rights under copyright in the Perfect 10
19 Copyrighted Works.

20 33. The infringement of Perfect 10's rights in and to each of the
21 Perfect 10 Copyrighted Works constitutes a separate and distinct act of
22 infringement.

23 34. The acts of infringement by Yandex have been willful,
24 intentional, and purposeful, in reckless disregard of and with indifference to the
25 rights of Perfect 10.

26 35. As a direct and proximate result of the infringements by Yandex
27 of Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10
28 Copyrighted Works, Perfect 10 is entitled to its actual damages and Yandex's

1 profits pursuant to 17 U.S.C. § 504(b).

2 36. Alternatively, Perfect 10 is entitled to statutory damages,
3 pursuant to 17 U.S.C. § 504(c).

4 37. Yandex's conduct is causing and, unless enjoined and restrained
5 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
6 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
7 law. Pursuant to 17 U.S.C. § 502, Perfect 10 is entitled to injunctive relief
8 prohibiting further infringements of Perfect 10's copyrights.

9 38. Perfect 10 further is entitled to its attorneys' fees and costs
10 pursuant to 17 U.S.C. § 505.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff Perfect 10 prays for judgment against Yandex, and each of the Doe Defendants, as follows:

1. That Yandex, and each of the Doe Defendants, and their officers, agents, servants, employees, representatives, successors, and assigns, and all persons in active concert or participation with them, be enjoined from copying, reproducing, distributing, adapting, or publicly displaying the Perfect 10 Copyrighted Works;

2. That Yandex be ordered to destroy all photographs, documents, and other items, electronic or otherwise, in its possession, custody, or control, that infringe the copyrights of Perfect 10.

3. That Yandex be ordered to remove all links between its website and all websites that infringe Perfect 10 copyrights, and be prohibited from accepting advertising from, or placing ads on, websites which infringe Perfect 10 copyrights.

4. For an order of restitution and/or disgorgement to Perfect 10, in an amount to be proven at trial, but not less than \$5 million.

5. For Perfect 10's actual damages, in an amount to be proven at trial, but not less than \$5 million.

6. For a full accounting of all profits, income, receipts, or other benefits derived by Defendants as a result of its unlawful conduct.

7. For statutory damages under the Copyright Act, in an amount to be proven at trial, but not less than \$5 million.

8. For punitive damages.

9. For attorneys' fees and full costs.

10. For such other and further relief as this Court deems just and appropriate.

1 Dated: March 26 2012 KRAUSE KALFAYAN BENINK & SLAVENS, LLP

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3 By: 

4 ERIC BENINK

5 Attorney for Plaintiff
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DEMAND FOR JURY TRIAL

Perfect 10 hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: March 26 2012 KRAUSE KALFAYAN BENINK & SLAVENS, LLP

By: 

ERIC BENINK

Attorney for Plaintiff